the question of good faith. The insurer undoubtedly had a right to have the case against the insured proceed to judgment, and the surrender of this right might be held as a valid consideration for the money contributed by the insured. On the other hand, the insurer agreed to indemnify the insured up to the amount named in the policy, but it stipulated for the option to compromise or defend actions against the insured in order to protect itself against unjust claims; it, therefore, seems manifestly inequitable to allow the insurer to thus reduce its liability at the expense of the insured—to just that extent the efficacy of the policy is nullified. It is conduct of this sort on the part of the insurer that has resulted in so much unwise legislation on the subject of insurance.

EVIDENCE—NEGLIGENCE—"RES IPSA LOQUITUR."—The plaintiff purchased in the defendant's restaurant a cake, prepared, baked and wrapped in waxpaper by the defendant. While eating the cake, the plaintiff bit upon a nail concealed therein; whereupon she brought an action against the defendant for the injuries resulting. To sustain her action, the plaintiff relied upon the doctrine of *res ipsa loquitur*. *Held*, the doctrine of *res ipsa loquitur* does not apply. *Jacobs* v. *Childs Co.*, 166 N. Y. Supp. 798.

The doctrine of *res ipsa loquitur* (the thing itself speaks) is an exception to the general rule that negligence is not to be inferred, but must be affirmatively proved. *Johns* v. *Pennsylvania R. Co.*, 226 Pa. 319, 75 Atl. 408, 28 L. R. A. (N. S.) 591. This maxim is founded upon the principle that evidence of an injury, which may only be palliated or explained by facts within the peculiar knowledge of the perpetrator, carries with it proof of its wrongful character and places upon the perpetrator the burden of offering a just excuse. *Thompson* v. *St. Louis Southwestern Ry. Co.*, 243 Mo. 336, 148 S. W. 484. See WIGMORE, EVIDENCE, § 2509.

In a Georgia case, a person who was injured by swallowing bits of glass contained in a bottle of beverage was allowed to recover by merely showing the presence of the bits of glass. While the court did not mention the doctrine of *res ipsa loquitur*, it evidently applied that principle. *Watson* v. *Augusta Brewing Co.*, 124 Ga. 121, 52 S. E. 152, 110 Am. St. Rep. 157, 1 L. R. A. (N. S.) 1178. And in a New York case, a woman was allowed to recover for injuries received from a needle by merely showing its presence in an unfinished seam of a dress. *Garvey* v. *Namm*, 36 App. Div. 815, 121 N. Y. Supp. 442. In these cases, however, the substance causing injury was used in the production of the finished article in which it was found, and the natural presumption would be that it was left there through the negligence of the defendant. It has been contended that an entirely foreign substance should not so readily be presumed to have found its way into the article through the defendant's negligence.

Authority on the precise point involved in the instant case is scant. This case purports to follow *Hasbrouck* v. *Armour & Co.*, 139 Wis. 357, 121 N. W. 157, 23 L. R. A. (N. S.) 876, but aside from this case, there seems to be no authority for the doctrine here laid down.

Although the court attempted to justify its decision on reason and principle, if the situation is fully considered from the plaintiff's viewpoint, the more weighty reason appears to be in his favor. His only evidence is the wrongful presence of the nail in the cake, and unless the prima facie presumption of negligence is placed upon the defendant who has better means for investigating the cause of the accident, the plaintiff can have no evidence to place the responsibility on any one for his injury.

EXTRADITION—FUGITIVE FROM JUSTICE—EFFECT OF PREVIOUS DELIVERY TO ANOTHER STATE OF THE ACCUSED BY THE DEMANDING STATE.—The plaintiff, having committed a crime in California, went to Texas, where he committed another crime. While held in custody in Texas a requisition issued by the governor of California was honored and the plaintiff was given up to an agent of the former state. He was taken back to California but the charge in that state was not pressed to trial. Thereupon the governor of Texas made requisition upon the governor of California to have the plaintiff returned to answer for the offense committed in Texas. The plaintiff petitioned for a writ of *habeas corpus*. *Held*, the petition is denied. *In re Whittington* (Cal.), 167 Pac. 404.

Art. 4, sec. 2 of the United States Constitution provides that, "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime." This provision of the Constitution does not direct the surrender of a person found within the boundaries of a state, unless it is made to appear that he is in fact a fugitive from justice. *Ex parte Reggel*, 114 U. S. 642. But the words "fugitive from justice," as used in this connection, must not be understood in their literal sense, but rather in reference to the subject matter of the Constitution and the laws of the United States in relation thereto. *Hibler* v. *State*, 43 Tex. 197.

It seems generally agreed that if a person commits a crime in one state, for which he is indicted, and departs therefrom and is found in another state, the executive warrant from the demanding state is prima facie evidence that the accused is a fugitive from justice. *Ex parte Edwards*, 91 Miss. 621, 44 South. 827. One court has even gone so far as to hold that such facts establish conclusively that one is a fugitive from justice. *People* v. *Pinkerton*, 17 Hun (N. Y.) 199.

It has long been established that for purposes of extradition between the States of the Union, it does not matter what induced the departure of the criminal. *Drew* v. *Thaw*, 235 U. S. 432. See 2 VA. LAW REV. 472. Whether a person is a fugitive from justice does not depend on whether he has consciously and literally fled from another state for the purpose of avoiding trial, but upon whether having actually—not merely constructively—committed a crime within another state, he has departed therefrom. *Ex parte Duddy*, 219 Mass. 548, 107 N. E. 364; *Roberts* v. *Reilly*, 116 U. S. 80. Accordingly, one who commits a crime